

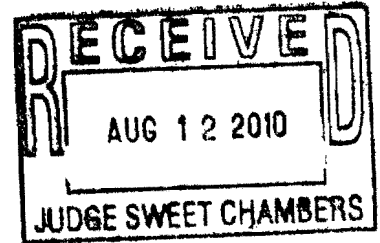
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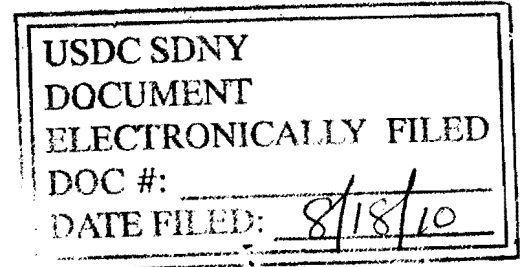
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Via Fax (212) 805-7925

August 12, 2010

Hon. Judge Robert W. Sweet  
United States Judge  
United States District Court  
Daniel Patrick Moynihan Courthouse  
For the Southern District of New York  
500 Pearl Street, Suite 1620  
New York, NY 10007-1312



Re: It's a 10, Inc. v. Ph Beauty Labs, Inc. et al. 10 CV 972 (RWS)(JCF)

Dear Judge Sweet:

We represent the Plaintiffs in the referenced matter.

This is a trademark infringement case in which Plaintiff It's a 10, Inc. alleges, *inter alia*, that Defendants infringed Plaintiffs' trademarks and trade dress.

We are contacting the Court to request that the Court adjourn the pre-trial conference currently scheduled for **October 6, 2010** until **December 6, 2010** to allow the parties additional time to prepare for and attend a settlement conference before Magistrate Francis currently scheduled for **October 1, 2010** and, as more fully discussed below, to complete discovery, if necessary. The Court has not entered a discovery scheduling order in this case. This is the first request for an extension of the October 6, 2010 pre-trial conference.

We have conferred with Defendants' counsel Brian W. Brokate, Esq. as to this request. Defendants' position is that they do not oppose this request but do not join in the request (Defendants p11 Beauty Labs, Inc. and Bed Bath & Beyond, Inc. are currently represented by Brian W. Brokate, Esq. of the firm Gibney Anthony & Flaherty. Defendant Pathmark Stores, Inc. is currently represented by Arlana Cohen, Esq. of the firm Cowan Liebowitz & Latman. However, we were advised by Mr. Brokate yesterday that his firm will shortly be substituting in as counsel for Pathmark Stores, Inc.).

The parties are currently scheduled to appear for a settlement conference before Magistrate Judge Francis on **October 1, 2010**.

*Settled  
8/20/10  
S. 12-10*

A copy of the Court's Order of June 17, 2010 is attached. The Court's Order currently sets a **pre-trial conference for October 6, 2010.**

The procedural history of this case is as follows:

-Plaintiffs filed a Complaint on February 5, 2010 and moved for a preliminary injunction on March 4, 2010;

-Defendant pH Beauty answered on March 31, 2010;

- The Court heard Plaintiffs' motion for preliminary injunction on March 31, 2010 and entered a preliminary injunction upon consent on April 7, 2010. (The parties did not conduct any discovery in connection with Plaintiffs' preliminary injunction motion);

-On March 26, 2010, Defendant pH Beauty moved to transfer the case to California;

--On April 9, 2010, Plaintiff moved to amend their Complaint to, *inter alia*, add Defendants Bed, Bath & Beyond and Pathmark Stores, Inc.;

- On June 14, 2010, the Court denied Defendants' motion to transfer the case and granted Plaintiffs' motion to amend the complaint to add Bed, Bath & Beyond and Pathmark Stores, Inc. as Defendants;

-Plaintiffs filed an Amended Complaint on June 16, 2010 to, *inter alia*, add Bed, Bath & Beyond, Inc. and Pathmark Stores, Inc. as Defendants;

-Defendants Bed, Bath & Beyond and Pathmark Stores, Inc. were served with process on June 21 and 22, 2010, and answered on July 13, 2010 and August 5, 2010, respectively;

-Defendant pH beauty Labs, Inc. answered on July 1, 2010;

-On July 16, 2010, Plaintiffs served document requests and interrogatories on Defendant pH Beauty and noticed depositions for early September 2010;

-On July 27, 2010 Plaintiffs served document requests and interrogatories on Bed, Bath & Beyond and Pathmark Stores, Inc.;

-On August 11, 201, Plaintiffs noticed depositions of Bed, Bath & Beyond and Pathmark for September, 27 and 28, 2010;

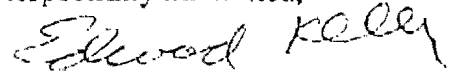
-Plaintiffs agreed with Defendants that all Defendants' responses to Plaintiffs' document requests and interrogatories will be served by **September 4, 2010.**

Defendant pH Beauty has agreed to provide relevant information to Plaintiffs in advance of the **October 1, 2010** settlement conference (This Court has entered a confidentiality order to facilitate that exchange of information).

The parties request the adjournment of the pre-trial conference to **December 6, 2010** to allow the parties additional time to prepare for the settlement conference of **October 1, 2010** and to conduct discovery, if necessary. Plaintiffs currently anticipate three witness depositions of Defendant pH Beauty and a deposition of each of Bed, Bath & Beyond and Pathmark Stores, Inc. In the event that Defendants' document production (which is due **September 4, 2010**) is delayed or incomplete, Plaintiffs anticipate that the deposition schedule would slip and Plaintiffs would need more time to complete discovery. Additionally, discovery of Defendant pH Beauty may reveal additional necessary witnesses for discovery, including a former employee of Defendant pH Beauty.

For the foregoing reasons, Plaintiffs request that the pretrial conference currently scheduled for **October 6, 2010** be adjourned to **December 6, 2010** or some other date appropriate for the Court which would allow Plaintiffs additional time to complete discovery.

Respectfully Submitted,



Edward P. Kelly

Cc: Michael Lee, Esq.  
Brian W. Brokate, Esq.  
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Bed, Bath & Beyond, Inc.  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

It's A 10  
Plaintiff(s),

- against -

Defendant(s).

PH Beauty Labs

Sweet, D. J.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 6/17/10

PRETRIAL ORDER

10 civ. 972 (RWS)

Counsel are directed to appear in courtroom 18C on Oct 6, 10 at 4:30 pm for a pretrial conference for the purpose of resolving any outstanding discovery or other issues, and setting a time for trial. Plaintiff(s)' counsel ARE REQUIRED TO NOTIFY COUNSEL FOR ALL PARTIES OF THIS CONFERENCE. Prior to the appearance at the pretrial conference, all counsel appearing in the action shall have discussed any open issues.

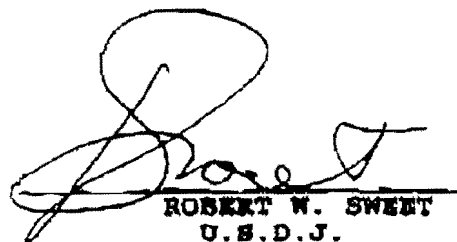
This conference may not be adjourned without direction from the court. Failure to appear at the conference may result in termination of this action.

All mail and telephone calls concerning the calendar status of this action must be directed to the Courtroom Clerk. Any requests for interpreters must be made at least 24 hours in advance of the hearing at which such services are required by calling the Interpreters Office (805-0064).

It is so ordered.

New York, N. Y.

6/17/10

  
ROBERT W. SWEET  
U.S.D.J.

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E-MAIL: [epk@patentadvance.com](mailto:epk@patentadvance.com)**FAX TRANSMITTAL SHEET**

TO:

**Hon. Judge Robert W. Sweet**

FAX NUMBER:

**212-805-7925****Date: August 12, 2010****Re: It's a 10, Inc. v. pH Beauty Labs et al. 10 CV 972 (RWS)(JCF)****TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE): 5**

Please see the attached.



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Edward P. Kelly

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